

ZONING BOARD OF APPEALS
MEETING MINUTES

July 8, 2014

4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present:	Rick Barnes	James Moreno
	Deland Davis	Carlyle Sims
	Greg Dunn	John Stetler
	Sharon Heisler	

Members Excused: Becky Squires

Staff Present: Marcel Stoetzel, Assistant City Attorney
Brad Sysol, Attorney
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: None

OLD BUSINESS: None

Mr. John Stetler, Chairperson stated the meeting procedure where everyone present may speak either for or against an appeal and that he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. Stetler stated if denied the petitioner may appeal to the Circuit Court.

NEW BUSINESS:

Mr. Greg Dunn made reference to the 2013 Annual Report that was distributed noting on page 8 his and Mr. Moreno's term of office having an expiration date of January 1, 2014. Mr. Dunn asked if they would be allowed to vote and participate in today's meeting given their terms having expired. Mr. Marcel Stoetzel stated according to the By-laws, Article II, Sec. 1, members shall be appointed for a term of three years or until that members successor takes office, with one other provision that terms of board of appeals members who also serve on the Planning Commission shall be limited to that term.

A) Zoning Use Variance Appeal #Z-01-14:

Petition from Mr. Karl J. Bell, 244 Calhoun Street, Battle Creek, MI 49017. Request is for a Dimensional Variance to allow an accessory building to be built 4.5 ft. higher than the 14 ft. min-peak maximum height allowed for property known as: 244 Calhoun Street (Parcel #1640-00-041-0); application is requested pursuant to Planning and Zoning Code, Chapter 1286.03.

Mr. Glenn Perian, Senior Planner, Planning Department outlined the report stating appeal #Z-01-14 is a petition from Mr. Karl Bell seeking approval of a Dimensional Variance to construct an accessory building 18.5' tall in an R-2 zoning district. The total overall height of the proposed accessory building is 21 ft. with 16 ft. side walls; however, Chapter 1230.06 defines the height of buildings as the mean level between the eaves and the ridge of a gable roof making the height of this particular accessory building 18.5 ft. by definition. All other ordinance requirements will be met for this proposed project other than this height variance request. Based on the application submitted, Planning staff is recommending denial of appeal #Z-01-14 based on the following findings and those listed in the staff report:

- A) Staff finds that practical difficulty does not exist as applied to this specific building project. Chapter 1286 of the Planning and Zoning Code specifically states that accessory buildings shall not exceed 14 ft. in height, and in this case, the appellant can comply with the code.
- B) Staff does not believe that the practical difficulty is exceptional and peculiar to the subject parcel and the conditions associated with the property generally exist throughout the city.
- C) Staff believes that if the variance is granted the intent of the ordinance will be altered and is not convinced that the subject property is unique in any way.

Mr. Perian stated for these reasons they are recommending denial of appeal #Z-01-14 and offer as an alternative to plan to attach the outbuilding or garage to the house, which would change the circumstances and can then increase the height of the garage.

Mr. Karl Bell, 244 Calhoun Street came forward to speak, stating the garage he wishes to build is to secure his property as his property had been broken into with up to \$5,000 dollar worth of items stolen. Said he had a boat that he had to sell because items were stolen from it such as motor, oars and anchors; noted the neighborhood and surrounding properties have persons watching and waiting to steal. Said he feels it would be more aesthetically correct to build up instead of out and not block anyone's view with a back lot being a parking lot for an apartment house. Stated his neighbor "Ester" is not opposed to the height and also "John", who is on the Neighborhood Planning Council is in support.

Mr. Rick Barnes asked if the garage could be attached to his residence and/or if he put a flat roof would it be in compliance. Mr. Glenn Perian stated yes, with 14 ft. side walls a flat roof would work.

Mr. Bell stated if he attached it to his house it would raise his house insurance and would prefer to have it separate from his home and flat roofs always leak. States he has been improving his property immensely since he has moved there and had also needed to board up his basement windows because of how he was broken into before and feels if garage has two stories it would be more difficult.

Mr. John Stetler complemented Mr. Bell on his property, as it looks very nice.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE DIMENSIONAL VARIANCE REQUEST APPEAL #Z-01-14 FOR 244 CALHOUN STREET TO ALLOW AN ACCESSORY BUILDING TO BE BUILT 4.5 FT. HIGHER THAN THE 14 FT. MID-PEAK MAXIMUM HEIGHT ALLOWED FOR PROPERTY

ZONED “R-2 TWO FAMILY RESIDENTIAL” AS PRESENTED; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. Deland Davis stated the standard for a dimensional variance is in general with the shape of the property, hills etc. and not individuals situations; noted the property is well kept and does not see anything with the characteristics of the property requiring a need for a variance for a building more than 14 ft. high. Stated he does sympathize with the owner regarding the thefts.

Mr. Carlyle Sims stated the owner wants to improve and invest in his property in this older neighborhood with structures of different heights and he does not see any reason for denying a 4 ft. height increase.

Mr. Rick Barnes asked Mr. Glenn Perian if we had heard of any of his neighbors being opposed to this variance request. Mr. Perian stated the Planning Department had not received any objections from the community.

Mr. Greg Dunn said he believes the staff report is correct in this case and that the 14 ft. mid-peak height is determined by the ordinance and understands appellants request because of the need to secure his property. States he does have alternatives and does not feel there is a practical difficulty or he can go to other locations to secure his property and need to follow the ordinance and will not be voting in favor.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN; THREE IN FAVOR (BARNES, HEISLER, AND SIMS); FOUR OPPOSED (DAVIS, DUNN, MORENO, AND STETLER), MOTION FAILED.

Chairperson John Stetler stated the appeal has been denied and they may appeal to Circuit Court and thanked Mr. Bell for coming.

B.) Election of Officers:

Mr. Greg Dunn nominated Mr. John Stetler as Chairperson; Second by Mr. Deland Davis.

(No other nominations submitted)

Roll Vote Taken; All in Favor, None Opposed.

Mr. James Moreno nominated Mr. Greg Dunn as Vice-Chairperson; Seconded by Mr. Rick Barnes.

(No other nomination submitted)

Roll Vote Taken: All in Favor, None Opposed.

C.) Discussion Regarding By-Laws Article VIII, Section 7:

Mr. John Stetler asked if the board determines the By-laws for the Zoning Board or are they determined by the City Commission. Mr. Perian stated the Zoning Board decides.

Mr. Glenn Perian stated they were asked to come-up with a definition of newly discovered evidence and this was because of the case of Mr. Christian’s use variance request; case paragraph #3 regarding new evidence. Stated the common theme for definitions was 1) The “new evidence” could not merely

be cumulative or just “more of the same”; 2) The new evidence must be so material that it would probably produce a different result; 3) The new evidence must be discovered after the hearing because if it were found beforehand, it would not qualify as “new evidence”, and the evidence must be such that the appellant could not by due diligence have discovered it before the hearing. Said it was also discovered in their research that only the Zoning Board can determine if the information submitted would meet the test of newly discovered evidence and would then be brought before the board to see if it qualified as new evidence and if a new hearing was to be heard by the ZBA.

Mr. Perian noted the city is not required by zoning enabling act to allow or accept reapplications for a variance that was previously denied because all decisions by the zoning board shall become final. Said the board has two options: 1) They can keep the reapplication procedures in the Bylaws and allow reapplications, if this is the case they recommend the language be changed to add the definitions previously noted or; 2) The board can decide to not allow reapplications and the decision would be the zoning boards on how they wish to proceed.

Mr. Greg Dunn stated he is glad they are having this discussion and thanks the staff for bring the proposal before them for discussion. Said he feels it is important to change and is concerned with new evidence and felt that in Mr. Christian’s case it was the same appeal to reconsider on multiple occasions; in a case such as that one, where there might be a rental property with multiple tenants that are outside of the zoning, they may get creative and continue to reapply and reapply to delay the decision of the ZBA and the City to implement any changes on a property in conditions that might be less favorable for those living there or neighbors, neighborhood and overall good of the community. Mr. Dunn said he believes they need to consider some rules that can cut off that appeal process and keep persons from reapplying to avoid having to face the consequences after a decision has been made.

Mr. John Stetler stated there had been many times they have asked for more information and the board had asked Mr. Christian to submit new information where the votes in favor had increased each time and ended with a tie. Said he is in favor of allowing persons to provide additional information that is discovered and/or get council to provide information and not feel fearful to come before them and feel if they do not present everything they will lose. Stated he would like to continue to allow for additional information to be presented for an appeal.

Mr. Greg Dunn said his fear is there may be more cases with people bringing continual information and want to keep coming before the board. Stated they need to hear the appeal and make a decision and then they can come back after one-year.

Mr. Deland Davis asked Mr. Glenn Perian regarding his definitions noted of new evidence was very good with the 4 characteristic listed. Asked Mr. Perian how he sees this working; would they as a board decide if it is new evidence. Mr. Perian stated yes they can determine if it is new evidence and hear the appeal based on that new evidence, if not it can be determined it was not new evidence or did not meet the criteria for new evidence and would have the ability to reapply in that instance according to the by-laws. Said if the original decision is final they would not have the opportunity to return before one-year.

Mr. Deland Davis stated if the 4 criteria was used then he could be in support; asked if for instance they came in January and denied and came back in February with what they feel is new evidence and they would act on that and if it was decided it was not new evidence they cannot appeal again; if it is

decided to be new evidence based on these 4 criteria they would go along as they normally would. Mr. Perian stated in Mr. Christian's criteria he did not think he would have meet the new information criteria suggested; as he used the Polk Directory and letter from others that they lived there, but would not meet test #4, that it must be such that an appellant could not by due diligence have discovered it before the hearing and feel it was more of the same information previously provided.

Mr. James Moreno stated he was in agreement with Mr. Dunn; if an appeal is brought to the board it is their due diligence to provide the information and not create a situation where they continue to come and convince or wear the board down to allow the variance. Said they do have the option to proceed to Circuit Court; feels it can create more difficulties and should go with their decision as being final and have options to return in one-year or appeal to Circuit Court.

Mr. Greg Dunn stated regarding criteria #2; where someone has the 4 criteria, is there an end to a petitioner submitting something every month if they are persistent. States is this how they want to do business.

Mr. John Stetler asked if they have a right to table and ask for more information for next months meeting. Mr. Perian stated yes, you can always ask for additional information. Stated there can be three options; 1) Choose to not grant. 2) Allow reapplication. 3) Can keep the reapplication procedure in the by-laws as one year or anytime they can provide new evidence.

Mr. Greg Dunn stated that in the past the board had asked to postpone making a decision to allow more members to be in attendance for a vote and he is lenient to allow for them to be better prepared to provide additional information. Mr. Glenn Perian stated he agrees in the past the board has allowed them to come back for the next monthly meeting.

Mr. Deland Davis asked if new evidence is allowed based on the (4) criteria noted and would it be only allowed once. Mr. Perian stated that would be the attorney's decision.

Mr. Brad Sysol stated yes, a number can be allowed one-year or one reapplication and that the Zoning Board of Appeals is final decision under the statue and would be very accommodating to allow a rehearing.

Mr. Greg Dunn stated we should look at other municipalities for what they allow. Mr. Brad Sysol stated based on research some provide a right to a rehearing usually after one-year and many communities do not allow for a rehearing (most did not). Mr. Marcel Stoetzel said many of the comments related back to Mr. Christian's property which was a good example for the process and if you look back at the minutes and some things to keep in mind for possible changes that he thinks are important is; his first appearance he had an attorney which had not attended the meeting and twice chose to not appeal to Circuit Court, either by design or by default and had two different attorney's, in referring back regardless of everything he provided and the discussion of new evidence there was still a substantial hurdle to overcome for him of the fact the property was deemed noncompliant at some point and time regardless of what was provided. Stated to keep in mind when giving persons numerous opportunities it should be a rare occurrence or the exception.

Mr. Greg Dunn he would like to propose adoption of #1 that once a decision is made they would have one year to reapply.

Mr. Carlyle Sims stated he has been on this zoning board for many years and had yet to see an applicant bring information back 3-4 times to get an appeal and does not see any reason to make a change.

Mr. John Stetler asked Mr. Perian if he was looking for a motion from the zoning board. Mr. Perian stated the board may think about the options and then provide directions regarding the amendments to the By-Laws and just looking for direction.

MOTION: WAS MADE BY MR. GREG DUNN TO PROPOSE ADOPTION OF #1 BY-LAW REVISION AS PRESENTED; SUPPORTED BY MR. JAMES MORENO.

Mr. Brad Sysol stated they cannot vote on an amendment to the By-Laws today; according to Article IX it needs to be presented at least one meeting before it's voted upon. Mr. Glenn Perian stated he can propose the language and present at the next meeting.

MOTION WITHDREW: BY MR. GREG DUNN TO ADOPT #1 BY-LAW REVISION AS PRESENTED; SUPPORTED BY MR. JAMES MORENO.

Mr. Greg Dunn stated he would like to review some other Zoning Boards By-laws and agree with Mr. Carlyle Sims that if it has not been an issue in the past. Said he is afraid persons will draw the decision out for a year and then reapply the process and never come to a conclusion and does not feel that is the way they want to do business.

Mr. John Stetler stated it would be more favorable to him if they dropped the ability to appeal at the end of one-year and allow them to only appeal if new evidence had been discovered.

Mr. Deland Davis asked our attorney if the city suggested some language to the board at the next meeting could they then act upon it at that time or would they have to put it off for the next meeting. Mr. Brad Sysol stated they would have to put it off until the next meeting; as you would need to present the proposed amendment at the next meeting and then vote on it the following meeting.

Mr. Rick Barnes asked if an appellant did not like the boards' decision they can appeal it to circuit court; he was under the assumption that they cannot appeal their decision, but can appeal if they had done it correctly; asked what can be appealed. Mr. Stoetzel stated yes they can appeal the zoning board's decision; but would have a high hurdle to overturn the board's decision and basically need to show their decision was arbitrary and capricious and not based on any reasonable review of the facts before this board.

Mr. Glenn Perian stated some of the research he found showed that an appellant can provide the new evidence to the Circuit Court. Mr. Stoetzel agreed.

Mr. Greg Dunn said he had read some ZBA decisions that went to Circuit Court is in agreement with the Zoning Board as they followed the ordinance and rarely overturn their decision.

Mr. Rick Barnes stated he would like to allow them to come back to the Zoning Board as they might not had been prepared with doing this for the first time, but should have a limit on how many times.

Mr. James Moreno stated a person should ask city staff and be responsible for providing the information needed for their appeal submittal.

Mr. Greg Dunn stated he based his decision on the ordinance as written and if someone is not in agreement they should go to the City Commission to have the City Ordinance changed.

Chairperson, Mr. John Stetler asked the board if they wanted to vote on option #1(not granting appeal re-hearings) or option #2 (keeping the reapplication procedure in the by-laws) for the amendment of Article VIII, Section 7, to the revision of the By-Laws.

ROLL VOTE TAKEN: (2 VOTES; DUNN AND MORENO) IN FAVOR OF OPTION #1 AND (5 VOTES; BARNES, DAVIS, HEISLER, SIMS AND STETLER) IN FAVOR OF OPTION #2.

Chairperson asked Mr. Perian to bring the amendment change with option #2 for their approval based on the majority vote of the zoning board. Mr. Perian agreed.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. GREG DUNN TO APPROVE THE DECEMBER 10, 2013 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. JAMES MORENO.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED –MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF: Mr. Carlyle Sims thanked the planning staff for the reports being provided in a timely manner so they have time to review the applications; stated good job done.

ADJOURNMENT: Meeting was adjourned at 4:54P.M.

Submitted by: Leona A. Parrish, Administrative Assistant, Planning Department